IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 139 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE R.P.DHOLAKIA

HONOURABLE MR.JUSTICE SHARAD D.DAVE

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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DHIRABHAI JIVABHAI GOHIL - Appellant(s)
Versus
STATE OF GUJARAT & 1 - Opponent(s)

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Appearance :
MR US BRAHMBHATT for Appellant(s) : 1,
MR RC KODEKAR APP for Opponent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE R.P.DHOLAKIA

and

HONOURABLE MR.JUSTICE SHARAD D.DAVE

Date : 18/07/2006

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE R.P.DHOLAKIA)

1. This appeal under Section 374 of the Code of Criminal Procedure has been preferred by the present appellant-accused being aggrieved and dissatisfied by the judgment and order of conviction dated 31st August, 2004 passed by the learned Additional Sessions Judge, Fast Track Court No.8, Bhavnagar in Sessions Case No.129 of 2000 whereby he was sentenced to undergo life imprisonment and fine of Rs.1000/-, in default, to undergo further one year S.I. for the offence under Section 302 of the I.P.C.

2. The prosecution story in brief is that on 14.02.2000 at about 3:30 p.m., when the deceased viz., Ashok Babubhai Rathod after taking lunch, was sleeping on the iron-rod cot in front of the house known as faliya, the appellant-accused came there with knife and without saying anything gave blow with it on the vital part of the body i.e. stomach and on raising screams, the complainant, daughter of the deceased viz., Alka, brother – Vijay Babubhai and neighbours reached at the place of incident and, therefore, the appellant-accused

ran away from the place of offence. Even, the deceased also tried to catch the appellant-accused, but he could not do it and he received severe injuries and fell down. Thereafter, the deceased was taken to the hospital, wherein he was declared dead. As per the complainant, the reason behind this incident was that on the day of incident at about 1 o'clock, the appellant-accused teased daughter of the deceased viz., Alka and as a result of that, being a father and law abiding citizen, the deceased scolded the appellant-accused. Therefore, the appellant-accused got excited and committed this offence and accordingly complaint to that effect has been filed by the brother of the deceased viz., Kanjibhai Khimabhai Rathod at Exh.11, which came to be registered as A.D. Note and, thereafter, registered as I-C.R.No.33/2000 with Bhavnagar 'D' Division Police Station for the offence punishable under Section 302 of the I.P.C. I.O. investigated the matter and arrested the accused person and also drew the offence place panchnama, inquest panchnama and also made arrangement for the purpose of sending the dead body for post-mortem. On arrival of the post-mortem report, it has been kept with the papers of the investigation. Clothes recovered

from the body of the deceased as well as the appellant-accused wore at the time of incident have also been seized under the panchnama. As the appellant-accused expressed willingness to show the muddamal weapon used by him in the alleged offence, two panchas were called and after preparing the preliminary panchnama, panchas, police officers and the appellant-accused went to the place as directed by the appellant-accused, where the accused produced the muddamal knife and panchnama to that effect has been prepared. I.O. also recorded the statements of various witnesses viz., daughter of victim, mother and other relatives and also the neighbours and, thereafter, sent all the muddamal for FSL analysis. On arrival of the FSL Report, it has been kept with the investigation papers. At the end of investigation, chargesheet has been submitted before the Court of Learned Chief Judicial Magistrate.

3. As the offence registered against the appellant-accused was exclusively triable by the Court of Sessions, same has been committed to the Court of Sessions under Section 209 of the Cr.P.C. at Bhavnagar and on receiving the same, it has been numbered as Sessions Case No.129/2000. At the time of framing the charge by the Learned Sessions

Judge, the appellant-accused pleaded not guilty and prayed for trial.

4. To prove the guilt against the appellant-accused, the prosecution examined in all 15 witnesses and also placed reliance upon 20 documentary evidence. At the end of trial, the Learned Additional Sessions Judge, Bhavnagar recorded further statement of the appellant-accused under Section 313 of the Criminal Procedure Code and after giving opportunities to the concerned parties, the Hon'ble Court convicted the appellant-accused as aforesaid giving rise to file the present appeal.

5. Heard learned counsel for the appellant-accused, Mr.U.S. Brahmbhatt and learned APP Mr.R.C. Kodekar for the respondent-State. Record & Proceedings are also with us.

6. Learned counsel for the appellant-accused has argued the matter on the basis of case papers held by him and also on the basis of the original case papers provided by us. The main contention raised by the learned counsel for the appellant-accused is about the edge of weapon. It is also contended that the panchas have not supported the say of the prosecution and they have turned hostile and in these circumstances, it cannot be said that the panchnama has been proved. It is further contended

that once panchnama is not properly proved then question of discovery will not be there at all. It is also contended that looking to the edge of the weapon, the injury alleged to have been received by the deceased on his vital part is improbable. It is also contended that there are lot of contradictions which require consideration.

7. We have gone through the evidence oral as well as documentary shown to us by the learned counsel for the appellant-accused as well as the reasoned judgment delivered by the Court below. We have also given thoughtful consideration to the facts emerged from the prosecution case as well as evidence on record which has been proved by the prosecution.

8. Prosecution Witness No.1 – complainant - Kanjibhai Khimjibhia Rathod Exh.11, who is the eye-witness of the incident categorically deposed that on the day of incident at about 3:30 p.m., he was there and his step-brother was taking rest in front of the house in open place. At that time, the appellant-accused came with knife in his hand and straightway gave knife blow upon the deceased and, thereafter, tried to run away from the place offence. The deceased and other persons tried to follow him but the deceased fell down and others

have caught the appellant-accused. This witness also deposed that he has seen the incident and has also deposed motive behind the offence stating that daughter of the deceased viz., Alka has been teased by the accused and, therefore, the deceased went to the house of the Madhuben Kantibhai where the accused person was serving and told accused – Dhiru not to behave in this fashion. This witness also deposed that since the deceased received serious injuries, he has been taken to the hospital, wherein he was declared dead. He also deposed that he has filed the complaint to that effect and same is produced at Exh.12. This witness was thoroughly cross-examined by the learned counsel for the accused, but nothing contrary has come out. This witness categorically deposed that he knows the accused viz., Dhiru well and the incident has been taken place in broad day light.

9. Thus, it has been established beyond reasonable doubt that the Prosecution Witness No.1 viz., Kanji is an eye-witness and through him prosecution has able to prove the incident as well as motive.

10. The prosecution has placed reliance upon the Prosecution Witness No.2 viz,. Alka Exh.14. This

witness is the daughter of the deceased aged about 21 years and whole incident which alleged to have been taken place as this witness has been teased by the accused and as the deceased – Ashokbhai has tried to tell him not to tease as he being the member of the said vicinity. This witness is also an eye-witness of the incident and categorically deposed in sub-para nos.2 and 3 of the deposition that the accused gave knife blow to her father on the vital part of the body i.e. stomach and as a result of that, part of the stomach has come out from the body. This witness has identified the accused person in the Court. This witness has been cross-examined by the other side. In the cross-examination, specific question has been asked to her by the other side regarding teasing and she admitted that the accused had teased her. She informed her father regarding the same and, therefore, her father scolded the accused which resulted into 302 of the I.P.C. She also admitted in her cross-examination that during the incident, people from the surrounding area also gathered there.

11. The prosecution also placed reliance upon the evidence of Prosecution Witness No.3 viz., Narodiben Jalambhai Exh.15. This witness

categorically deposed that the deceased was the son of her previous husband and after demise of her previous husband, she again married to his younger brother. She also deposed that the accused had teased her son's daughter viz., Alka. She deposed that she knows the accused and identified him into the Court also. This witness deposed regarding the incident and categorically deposed that after hearing the shout, she went to the scene of offence and has seen the incident through her own eyes. During cross-examination, not a single question has been asked to her about she not being a witness of incident. Hence, her evidence to that effected has remained unchallenged.

12. The prosecution also placed reliance upon the evidence of Prosecution Witness No.4 viz., Kusumben Rameshbhai Exh.16. This witness deposed in her deposition that she is the wife of brother of the deceased viz., Rameshbhai. According to her, at the time of incident, she was at her home and deceased was sleeping on the iron rod cot in front of the house. At that time, the accused came and gave knife blow to the deceased on the vital part of the body. This witness also deposed that she knows the accused – Dhiru and identified him

into the Court. She also deposed that after giving knife blow to the deceased, the accused tried to run away. She also deposed about the motive behind the offence. She clearly admitted in her cross-examination that after hearing the shout for help from the daughter of the deceased, she went there, but at that time, the accused had given knife blow to the deceased.

13. The prosecution also placed reliance upon the evidence of Prosecution Witness No.5 viz., Sunitaben Viteshbhai Exh.17. This witness corroborated the version of Prosecution Witness No.4 and nothing has been come out from this witness. For the purpose of proving the guilt against the accused, the prosecution examined this witness. This witness was thoroughly cross-examined by the learned counsel for the accused into the trial Court, but nothing contrary has been come out which shake her evidence even on the material point. It is established that the accused and this witness are known to each other since long even by name also and incident has been taken place also on the broad day light and, therefore, there is no reason to disbelieve her version.

14. The prosecution has also placed reliance upon the evidence of Prosecution Witness No.7 viz.,

Dr.Lalitaben Shantilal Exh.21. At the relevant point of time, this witness was discharging his duty as Medical Officer in Sir T. Hospital in O.P.D. Division. This witness deposed that she along with one Dr.R.N. Tandan performed the postmortem of the deceased. She also deposed that as far as external injuries are concerned, it was stab-wound of 5 cm. x 1 cm. in size cross and it was 36 cm. in depth and said injury was antimortem. She also proved the internal injuries and also deposed about the cause of death. She categorically deposed that if a person lying on the cot is attacked on the stock, this type of injury would be possible. She proved the postmortem report also. After seeing the muddamal knife, she categorically deposed that injury received by the deceased is caused by way of that muddamal.

15. Over and above, the prosecution could prove the discovery panchnama also. Even FSL Report also supports the say of the prosecution. In short, prosecution proved the case beyond reasonable doubt including the motive also through the evidence of aforesaid witnesses.

16. It reflects from the evidence that the muddamal weapon kept in such a place that except the

accused person, nobody can find the same. As far as preliminary panchnama is concerned, a point has been raised by the learned counsel for the appellant-accused that it has not been proved. However, it may be noted that necessary panchnama is proved by the prosecution through police officers. They are independent persons having no personal interest into the matter and they were there for the purpose of discharging their duty as a police officers and if they have prepared the panchnama, it is required to be believed. However, if some persons for the reasons best known to them, do not support the say of the prosecution even by way of panchas also, that does not mean that the accused is required to be acquitted. We are not discussing the evidence of each witness in detail in view of the observations made by the Hon'ble Apex Court in the case of STATE OF KARNATAKA VS. HEMAREDDY reported in AIR 1981 SC 1417 which reads as under:-

> "....This court has observed in Girija Nandini Devi V. Bigendra Nandini Chaudry (1967) 1 SCR 93: (AIR 1976 SC 1124) that it is not the duty of the appellate court when it agrees with the view of the trial Court on the evidence to repeat the narration of the evidence or to reiterate the reasons given by the trial Court expression of general agreement with the reasons given by the Court the decision of which is under appeal, will ordinarily suffice."

17. In these circumstances, it is a fit case, wherein appeal is required to be dismissed at this stage.

18. The appeal is accordingly dismissed.

(R.P.DHOLAKIA,J.) (S.D.DAVE,J.)

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